

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PERRY ASHELMAN,

Plaintiff,

V.

D. VAN OGLE, *et al.*,

Defendants.

NO. C09-5389 BHS/KLS

ORDER DENYING PLAINTIFF'S
SECOND MOTION FOR
APPOINTMENT OF COUNSEL

Before the court is Plaintiff's second motion for the appointment of counsel. Dkt. 24.

His previous motion (Dkt. 13) was denied on December 10, 2009. Dkt. 19. Having reviewed Plaintiff's second motion and balance of the record, the court finds, for the reasons stated below, that the motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). See also *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may

1 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
2 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
3 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional
4 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
5 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
6 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
7 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show
8 he has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
9 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
10 1101, 1103 (9th Cir. 2004).

12 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
13 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the
14 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of
15 further facts during litigation. But, if all that was required to establish the complexity of the
16 relevant issues was a demonstration of the need for development of further facts, then
17 practically all cases would involve complex legal issues. *Id.*

18 Plaintiff states that he should be appointed counsel because he lacks sufficient funds to
19 hire an attorney, he is untrained in the law and has limited access to the prison library, and that
20 the issues involved are complex. Dkt. 24. These same reasons were offered in Plaintiff’s first
21 motion for appointment of counsel. Dkt. 13.

22 As Plaintiff was previously advised, his indigency, imprisonment, inability to obtain
23 counsel and lack of legal skills are not exceptional circumstances that warrant the appointment
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1 of counsel. Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*.
2 Plaintiff has not demonstrated that the issues involved in this case are complex or that he has
3 had any difficulties in expressing them. Plaintiff has also not shown a likelihood of success on
4 the merits beyond his conclusory allegations that his case has merits.
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6 According, it is **ORDERED**:

7 1) Plaintiff's second motion for the appointment of counsel (Dkt. 24) is **DENIED**.
8 2) The Clerk shall send a copy of this Order to Petitioner and counsel for
9 Defendants.
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12 **DATED** this 26th day of February, 2010.

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15 Karen L. Strombom
16 United States Magistrate Judge
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